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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,236	10/21/2003	Matthias Helmstetter	TRW(ASG)6800	4934

26294 7590 02/05/2009

TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
1300 EAST NINTH STREET, SUITE 1700
CLEVEVLAND, OH 44114

EXAMINER	
GOODEN JR, BARRY J	

ART UNIT	PAPER NUMBER
3616	

MAIL DATE	DELIVERY MODE
02/05/2009	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MATTHIAS HELMSTETTER

Appeal 2008-3174
Application 10/690,236
Technology Center 3600

Decided: [1] February 5, 2009

Before: WILLIAM F. PATE, III, JENNIFER D. BAHR and STEFAN STAICOVICI, *Administrative Patent Judges*.

PATE, III, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 3-5, 7, and 8.[2] We have jurisdiction under 35 U.S.C. § 6(b).

The claims are directed to a gas bag module having a carrier that mounts to a vehicle steering wheel.

Claim 3 is illustrative of the claimed subject matter and is reproduced below:

> 3. A gas bag module (10), comprising a gas generator (16) and a generator carrier (12), to which said gas generator (16) is fastened, said generator carrier (12) being adapted to be fastened to a vehicle steering wheel (100),
>
> said generator carrier (12) having a base section (19) with detent elements (20) formed thereon, by means of which detent elements said generator carrier (12) can be fastened on a steering wheel side,
>
> characterized in that said generator carrier (12) comprises a multiple-component plastic (30, 32), said multiple-component plastic comprising different layers of said carrier (12), and
>
> said detent elements (20) comprising said multiple-component plastic (30, 32).

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

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[2] Claim 11 is allowed. Claims 6 and 16 are objected to by the Examiner as being dependent upon a rejected base claim and otherwise indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim (Final Rejection mailed on Nov. 6, 2006 at 6). Claims 6 and 16 are not part of the instant appeal.

Worrell	US 5,380,037 A	Jan. 10, 1995
Schütz	US 6,688,638 B2	Feb. 10, 2004

The Examiner rejected claims 3, 5, and 7 under 35 U.S.C. § 102(e) as being anticipated by Schütz. The Examiner rejected claims 4 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Schütz in view of Worrell.

ISSUE

Has Appellant established that the Examiner erred in rejecting claims 3, 5, and 7 under 35 U.S.C. § 102(e) as being anticipated by Schütz and claims 4 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Schütz in view of Worrell because neither Schütz nor Worrell disclose, teach or suggest the claimed detent element comprising a multiple component plastic?

FINDINGS OF FACT

1. Schütz discloses gas bag module 12 (Col. 2, ll. 20-21), comprising a gas generator 24 and a generator carrier 22 (Col. 2, l. 32), to which said gas generator 24 is fastened, said generator carrier 22 being adapted to be fastened to a vehicle steering wheel (Col. 2, l. 19 et seq.), said generator carrier 22 having a base section 23 with detent elements 30 formed thereon, by means of which detent elements said generator carrier 22 can be fastened on a steering wheel side.
2. Schütz additionally discloses that detent elements 30, comprise a pin 32 which may be constructed from either metal with an insulating surface

42, or in the alternative, plastic with a metallic contact surface (Col. 3, ll. 53-61).

3. Schütz is silent regarding whether the insulating material (at 42), used to electrically isolate the metallic pin 32 from the horn circuit (at 55) when the pin 32 is in the retracted position (Fig. 2a), is present when the pin 32 is constructed in plastic.
4. Schütz fails to disclose that the generator carrier 22 comprises a multiple-component plastic, said multiple-component plastic comprising different layers of said carrier, and said detent elements comprising said multiple-component plastic.
5. The Specification defines a multiple-component plastic as a material wherein the components define different layers of the carrier allowing for material characteristics of different plastics to be utilized in an optimum manner (Specification p. 1, ll. 21-23). In the detent elements 20 and the projecting section 24, a hard plastic is used as carrier component 30 and coated with a softer plastic 32 for noise and vibration dampening (Specification p. 5, ll. 14 et seq.).
6. Worrell teaches an air bag and inflator encapsulated in a container 18 covered by an outer soft cover or pad 20 (col. 2, ll. 65-66). The Examiner contends that since the cross section of container 18 and cover 20 are indicative of synthetic resin or plastic, Worrell teaches the claimed multi-component plastic (Ans. pp. 4 and 6). Worrell fails to teach or suggest mounting members 24, equivalent to the claimed detent elements, may comprise the same or similar material as the container 18 and pad 20.

PRINCIPLES OF LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir.1987).

Where no explicit definition for a term is given in the specification, the term should be given its ordinary meaning and broadest reasonable interpretation. *E-Pass Technologies, Inc. v. 3Com Corporation*, 343 F.3d 1364, 1368 (Fed. Cir. 2003). The ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1319 (Fed. Cir. 2005) (en banc). An applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

ANALYSIS

Appellant has clearly set forth in the Specification (Fact 5) and the prosecution history that the term "multiple-component plastic" defines a material comprising at least two different plastics. Any other interpretation of the term proffered by the Examiner is not supported by the record.

Schütz discloses that detent elements 30 may comprise plastic as an alternative to metal (Fact 2). Schütz, however, is silent regarding whether the insulating material (at 42), used to electrically isolate the metallic pin 32

from the horn circuit (at 55), when the pin 32 is in the retracted position (Fig. 2a), is present when the pin 32 is constructed in plastic (Fact 3). Based on the fact that Schütz does not explicitly mention removing the insulating material when the pin 32 is plastic, the Examiner concludes the insulating material is necessarily present in such a construction, thereby meeting the limitation requiring the detent elements to comprise a multiple-component plastic.

Firstly, it is speculation on the part of the Examiner to conclude that the insulating material, which is apparently present only to compensate for the conductive properties of a metallic pin, is present when the pin is constructed in plastic (See Brief p. 6; See also Reply Brief p. 5). Secondly, even assuming the presence of the insulating material on a plastic pin 32, there is no evidence that the insulating material is itself plastic (See Reply Brief p. 4). The limitation requiring the detent elements to comprise a multiple-component plastic would therefore still not be met. A speculative assumption requiring the presence of a plastic insulating material on a plastic pin cannot form a proper basis for a rejection under 35 U.S.C. § 102(e).

Worrell fails to cure the deficiency of Schütz with respect to claim 3 (Fact 6). Even assuming Worrell may be relied upon to teach the use of a multi-component plastic on the outer portions of the steering wheel to "increase the outward appearance and feel" (Ans. p. 4), there is no factual support or reasoning of record for concluding that it would have been obvious to form the detent elements out of that same material. Since Schütz fails to disclose all the features of claim 3, and Worrell fails to cure those deficiencies of Schütz, the rejection of dependent claims 4 and 8 under

35 U.S.C. § 103(a) as being unpatentable over Schütz in view of Worrell must also fall.

CONCLUSION OF LAW

On the record before us, Appellant has established that the Examiner erred in rejecting claims 3, 5, and 7 under 35 U.S.C. § 102(e) as being anticipated by Schütz, and claims 4 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Schütz in view of Worrell, because Schütz fails to disclose the claimed detent element comprising a multiple component plastic.

DECISION

For the above reasons, the Examiner's rejection of claims 3-5, 7, and 8 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv) (2007).

REVERSED

vsh

TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
1300 EAST NINTH STREET, SUITE 1700
CLEVEVLAND OH 44114